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UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
NORTHERN DIVISION

* * * * *
SIOUX RURAL WATER SYSTEM, INC., * 1:15-CV-01023-CBK
A NON-PROFIT CORPORATION, *
*
Plaintiff, *
*
vs. *
*
CITY OF WATERTOWN, A SOUTH *
DAKOTA MUNICIPALITY; AND *
WATERTOWN MUNICIPAL UTILITIES, *
AN AGENCY OF THE CITY OF *
WATERTOWN, *
*
Defendants. *
* * * * *

D E P O S I T I O N
O F
STEVE LEHNER
February 16, 2016
9 o'clock, a.m.

Taken at:
Offices of Watertown Municipal Utilities
901 Fourth Avenue SW
Watertown, South Dakota

Reporter: Tammy Stolle, RPR



23

1 Is this SRF loan to Municipal Utilities, or is it
 2 to the City of Watertown, or both?
 3 **A. Restate your question.**
 4 **Q.** Is this SRF loan that we've just been talking
 5 about, is that loan to Municipal Utilities or to the City of
 6 Watertown?
 7 **A. It's to the Municipal Utilities.**
 8 **Q.** Does the debt of the Municipal Utilities count
 9 against the debt limit that's set by state law for
 10 municipalities?
 11 **A. I would guess you'd have to ask the city that.**
 12 **Q.** All right.
 13 MR. HIEB: You don't know?
 14 **A. I don't know.**
 15 **Q.** (BY MR. COLE) It's okay if you don't know the
 16 answer, you don't know.
 17 **A. Maybe I shouldn't be telling you to ask**
 18 **questions.**
 19 **By the way, DWSRF stands for Drinking Water State**
 20 **Revolving Fund.**
 21 **Q.** Thank you.
 22 You talked about the improvements that had been
 23 made to your water production facilities, and it was several
 24 years ago that you had this \$24 million expansion project?
 25 **A. Correct.**

24

1 **Q.** What is your daily water capacity as we sit here
 2 today?
 3 **A. I'm going to be guessing, but it's around 9**
 4 **million a day, but that -- the water superintendent again has**
 5 **superior knowledge of that, and that fluctuates depending**
 6 **upon weather.**
 7 **Q.** Okay. I'm talking about the total production
 8 capacity on your peak day?
 9 **A. That you would probably have to ask the water**
 10 **superintendent.**
 11 **Q.** Okay. And I've been told at one point in time, I
 12 believe, that Watertown had like a 15 million gallon per day
 13 peak production ability. Do you know whether it does?
 14 **A. I don't know exactly what it is. It's more than**
 15 **the 9 million a day. Again, that's probably better answered**
 16 **by the water superintendent.**
 17 **Q.** When you talk about 9 million a day, are you -- I
 18 thought somebody walked in. Sorry.
 19 When you talk about 9 million a day, are you
 20 talking about that's the average daily use?
 21 **A. That's a -- yes. My water superintendent can**
 22 **correct me in future depositions.**
 23 MR. HIEB: Off the record.
 24 (Off-the-record discussion.)
 25 **Q.** (BY MR. COLE) Okay. As we sit here today,

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1 you're not aware if there's any updates going onto the 2010
 2 comp plan?
 3 **A. I'm not aware of any, no.**
 4 **Q.** Let's go to D-21 if we could, please.
 5 MR. HIEB: (Handing.)
 6 THE WITNESS: Thanks, Jack.
 7 MR. HIEB: You're welcome.
 8 **Q.** (BY MR. COLE) And it looks like your attorney
 9 has provided Defendant Bates number 21 to you. Do you see
 10 that?
 11 **A. Yes.**
 12 **Q.** And towards the bottom -- let me back up a minute
 13 here. This is part of the 2005 to 2020 comp plan, correct?
 14 **A. Okay.**
 15 **Q.** Yes?
 16 **A. Yes, it looks like it.**
 17 MR. HIEB: Well, just take a look.
 18 **A. It looks like it.**
 19 MR. HIEB: Okay.
 20 **A. It's in sequence.**
 21 **Q.** (BY MR. COLE) I'm not trying to trick you.
 22 MR. HIEB: Yes is fine. I just wanted to make
 23 sure you had looked at the cover.
 24 **A. It appears that it is, yes.**
 25 **Q.** (BY MR. COLE) Okay. And at the bottom of

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1 Defendant 21 there, it says, "Strategies. Maintain the
 2 policy of not providing water service beyond the city limits
 3 of Watertown." Do you see that?
 4 **A. Yes, I see that.**
 5 **Q.** Do you agree that this is the official policy, as
 6 you understand it, of the City of Watertown regarding
 7 providing water outside the city limits?
 8 **A. Generally, yes.**
 9 **Q.** You limited your answer by saying generally.
 10 Explain your answer, if you would, please.
 11 **A. We have a couple of agreements for providing**
 12 **water to users outside of the city limits of Watertown.**
 13 **Q.** Are you aware of any change in this policy that's
 14 set forth by the City of Watertown that changes the policy of
 15 not providing water service beyond the city limits of
 16 Watertown?
 17 **A. This policy is a policy of Watertown Municipal**
 18 **Utilities, not the City of Watertown.**
 19 **Q.** Okay. And I'm directing my question specifically
 20 to the City of Watertown. Are you aware of any policy that
 21 the city has adopted that changes this policy of not
 22 providing water service beyond the city limits?
 23 **A. I don't know.**
 24 **Q.** Let's go to Defendant 22, if we could, please.
 25 And towards the top of that, there's an arrow, it says,

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1 MR. HIEB: Yeah, I just --

2 Q. (BY MR. COLE) Okay. Now the economics of
3 acquiring existing rural water distribution systems, are they
4 ever considered when the city provides water such as you have
5 and as shown in Defendant 871 to 881?

6 A. Now when you're -- we don't have a formal formula
7 for economics. We get a request from a customer. We'll look
8 at, you know, whether or not the city is growing in that
9 area. We have lots of requests for water outside of the city
10 limits and typically we don't -- we follow our policy and
11 don't provide water to those folks.

12 If there's a reason, a significant reason to do
13 so, then our board considers it. We don't base it solely on
14 an economic evaluation of the price to take it there or the
15 revenue back or a payback in terms of -- because it's
16 generally something that's going to be annexed into the city
17 and we have that obligation to serve them when they're
18 annexed.

19 Q. Do you know how long some of those customers have
20 been served by the city?

21 MR. HIEB: You're referencing DEF-871?

22 MR. COLE: Yes. Sorry.

23 MR. HIEB: That's okay.

24 A. It looks like the date is right on the sheet.

25 Q. (BY MR. COLE) What's the latest, or the longest

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1 time someone's been served outside the city limits based on
2 what you see in Defendant 871?

3 A. It looks like about 1990 would be the -- well,
4 1971 would be Western Area Power Administration or the Bureau
5 of Reclamation.

6 Q. Okay. When you talk about your policy, you're
7 talking about MU's policy?

8 A. Correct.

9 Q. And in MU's policy, does it specifically state
10 that you're not going to provide water outside the city
11 limits?

12 A. Without approval of the board. There is a
13 provision for approval of the board to do so. As with all of
14 our policies, the board can approve deviations from it.

15 Q. Does the city council ever approve MU providing
16 water outside Watertown city limits?

17 A. I don't believe so, no. That's a Utility board
18 decision.

19 Q. Now one of the things that the city and MU has
20 provided to us are answers to request for production of
21 documents, and specifically, Jack, 19. I'm going to ask him
22 a couple questions about that.

23 MR. HIEB: Your request to us?

24 MR. COLE: Yes.

25 MR. HIEB: Okay.

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1 MR. COLE: It's on page seven.

2 MR. HIEB: Okay. (Handing.) It's in front of
3 him.

4 Q. (BY MR. COLE) And one of the answers here, or
5 part of the answer, I should be clear on this, it says, "All
6 of its policies, procedures and/or directives were drafted
7 pursuant to 9-47." Do you see that?

8 A. Sure.

9 Q. Is that your understanding of MU policies,
10 procedures or directives?

11 A. I don't have a copy of 9-47 in front of me, I
12 guess.

13 Q. Yeah, I'm just asking, is it your understanding
14 that all of MU's policies, procedures, and/or directives were
15 drafted pursuant to SDCL 9-47?

16 A. We follow the state law when it comes to
17 annexation, so I'm assuming 9-47 deals with that.

18 Q. And I'm just -- I'm going to try to get a clearer
19 answer to that, and if you've answered the question, I
20 apologize to you, but are MU's policies, procedures and/or
21 directives drafted pursuant to SDCL 9-47 to your
22 understanding?

23 A. I would say that not all of our policies are
24 drafted to 9-47 because we have policies for every aspect of
25 our operation and not every aspect of our operation deals

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1 with 9-47.

2 Q. Fair answer. But with regard to specifically the
3 acquisition or annexation of areas that include water --
4 areas served by rural water systems, you have utilized SDCL
5 9-47 in the drafting of your policies, procedures, and/or
6 directives, true?

7 A. Correct.

8 Q. And this question may draw an objection, but
9 what's your understanding of what SDCL 9-47 does?

10 MR. HIEB: Well, you did it. Objection. Calls
11 for a legal conclusion. Lack of foundation.

12 Q. (BY MR. COLE) Just asking your understanding.

13 A. My understanding is that when we annex a
14 customer, or we annex a property, a customer that's being
15 served by Sioux Rural Water, we have an obligation to buy out
16 what system is there providing service to them and pay, I
17 believe it's five percent gross revenues for five years.

18 Q. And when that happens, is it your understanding
19 that it's MU's decision on whether or not it will serve a
20 customer that has previously been served by Sioux?

21 MR. HIEB: Objection. Calls for a legal
22 conclusion. Go ahead.

23 A. Repeat the question.

24 MR. COLE: Could you read it back, please?

25 (The requested portion of the record was read by